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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Docket ID OCC-2012-0011

RIN 1557-AD61

Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to publish the maximum amount, adjusted for inflation, of each civil money penalty (CMP) within its jurisdiction to administer. These actions, including the adjustment methodology, are required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act or Act), as amended by the Debt Collection Improvement Act of 1996 (Debt Collection Improvement Act).

DATES: Effective: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or P. Holley Roberts, Senior Attorney, Enforcement and Compliance Division, (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act (Act), 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, periodically to evaluate and publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Act requires evaluations and inflation adjustments to be made at least once every four years following the initial adjustment.

The Act provides detailed instructions for calculating the inflation adjustment. It specifies that the adjustment shall reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.¹ See 28 U.S.C. 2461 note. In addition, the Act provides rules for rounding increases² and requires that any increase in a CMP maximum apply only to violations that occur after the date of the adjustment.

Finally, section 2 of the Debt Collection Improvement Act amended the Inflation

¹ The Department of Labor computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI-U with 1982-1984 as the base period. Data on the CPI-U is available at <http://bls.gov>.

² The Act's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. See 28 U.S.C. 2461 note.

Adjustment Act by limiting the initial adjustment of a CMP maximum pursuant to the Inflation Adjustment Act to no more than 10 percent of the amount established by statute. See 28 U.S.C. 2461 note.

Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), Congress transferred the powers, authorities, rights, and duties of the Office of Thrift Supervision (OTS) to the OCC on July 21, 2011, and the OCC assumed all functions of the OTS and the Director of the OTS relating to Federal savings associations. Therefore, the OCC now has responsibility for the ongoing supervision, examination, and regulation of Federal savings associations as of the transfer date. Accordingly, the OCC also is amending its rules of practice and procedure in adjudicatory proceedings for Federal savings associations, set forth at 12 CFR 109.103(c), to adjust the maximum amount of each CMP within its jurisdiction to administer to account for inflation.³

The OCC's last adjustments to the maximum assessments of CMPs applicable to national banks were published in the **Federal Register** on November 10, 2008, 73 FR 66493, and became effective on December 10, 2008. The last adjustments to the maximum assessments of CMPs applicable to Federal savings associations were published in the **Federal Register** on October 27, 2008, 73 FR 63625, and became effective on October 27, 2008.

Description of the Final Rule

This final rule sets forth the inflation-adjusted maximum assessment for each CMP that the OCC has jurisdiction to impose in accordance with the statutory

³ Although we are amending both 12 CFR part 19 and 12 CFR part 109 at this time, the OCC expects to consolidate these provisions in the future as part of its integration of the OCC and OTS rules.

requirements by revising the table contained in 12 CFR 19.240(a) with respect to national banks and the table contained in 12 CFR 109.103(c) with respect to Federal savings associations. Each table identifies the statutes that authorize the OCC to assess CMPs, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation factor by comparing the CPI-U for June of the calendar year preceding the adjustment with the CPI-U for June of the year in which the CMPs were last set or increased.⁴ See 28 U.S.C. 2461 note. The vast majority of CMPs applicable to national banks and Federal savings associations were last increased in 2008. For those CMPs, we compared the CPI-U for June 2011 (225.722) with the CPI-U for June 2008 (218.815), resulting in an inflation factor of 3.2 percent. A few penalties were last increased in 2000. For those penalties, we compared the CPI-U for June 2011 (225.7) with the CPI-U for June 2000 (172.4), resulting in an inflation factor of 30.9 percent. Finally, a few penalties were last increased in 1997. For those penalties, we compared the CPI-U for June 2011 (225.7) with the CPI-U for June 1997 (160.3), resulting in an inflation factor of 40.8 percent.

To obtain the inflation-adjusted CMP maximums, we multiplied the current amount of each CMP maximum by the appropriate percentage inflation factor (as calculated above) to determine the preliminary increase amount, rounded the preliminary increase amount up or down according to the rounding requirements of the Act, and then

⁴ As a general matter, if a preliminary calculated increase for a given CMP maximum fails to reach the level warranting an actual increase under the rounding rules prescribed by statute, then the maximum for that CMP does not change. In that case, the calculation in subsequent years would use an inflation adjustment factor reflecting changes in the Consumer Price Index since that CMP was last established or increased, whichever is more recent.

added the rounded increase amount to the current penalty maximum. In some cases, application of the rounding rules resulted in zero increase and no change to a CMP maximum.⁵ In addition, we are providing in this preamble two worksheets showing the calculations for each national bank CMP and each Federal savings association CMP (see below). These worksheets explain step-by-step how we calculated the inflation adjustment for each penalty. Accordingly, this rule replaces the CMP charts at §§ 19.240(a) and 109.103(c) with revised charts reflecting the maximum CMP amounts that will be in effect as of the effective date of this final rule.

Pursuant to § 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,⁶ we are amending the maximum CMP prescribed in 42 U.S.C. 4012a(f)(5).⁷ In that statute, Congress increased the maximum CMP per violation from \$385 to \$2,000 and eliminated the \$135,000 cap on the total amount of penalties assessed against a single regulated lender in any calendar year. As a result of that amendment, this CMP is not subject to adjustment at this time. Accordingly, in the worksheets below and the amended charts at §§ 19.240(a) and 109.103(c), the maximum assessment of the penalty for violating 42 U.S.C. 4012a(f)(5) is the new maximum of \$2,000 per violation.

Finally, we are amending §§ 19.240(a) and 109.103(c), consistent with the statute, to state that the adjustments made in §§ 19.240(a) and 109.103(c) apply only to violations

⁵ For example, there is no inflation adjustment for the maximum penalty prescribed by 12 U.S.C. 164 for tier 2. The current amount of that penalty is \$32,000. Because it was last adjusted in 2008, the appropriate percentage increase is 3.2 percent. The amount of the current penalty (\$32,000) multiplied by 3.2 percent equals a preliminary increase of \$1,024. The rounding rules specify that a penalty greater than \$10,000 but less than or equal to \$100,000 should be rounded to the nearest \$5,000. In order to round up to \$5,000, the preliminary increase would need to be at least \$2,500, which it is not. Therefore, the maximum penalty is not being adjusted.

⁶ Pub. L. 112-141, 126 Stat. 405 (July 6, 2012).

⁷ 42 U.S.C. 4012a(f) requires the OCC to assess civil money penalties against a national bank or Federal savings association that is found to have a pattern or practice of committing certain violations of the Flood Disaster Protection Act.

that occur after the effective date of this final rule.

2012 Worksheet - National Banks

<u>U.S. Code Citation</u>	<u>Tier (if applicable)</u>	<u>Maximum Penalty (in Dollars)</u>	<u>Year Last Adjusted</u>	<u>Percentage Increase</u>	<u>Amount of Increase (in Dollars)</u>	<u>Amount of Increase after Rounding (in Dollars)</u>	<u>Adjusted Maximum Penalty (in Dollars)</u>
12 U.S.C. 93(b)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 164	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,000	2008	3.2%	1,024	0	32,000
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 504	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1817(j)(16)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1818(i)(2)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2008	3.2%	8,800	0	275,000
12 U.S.C. 1832(c)		1,100	1997	40.8%	449	0	1,100
12 U.S.C. 1884		110	1997	40.8%	45	0	110
12 U.S.C. 1972(2)(F)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 3110(a)		37,500	2008	3.2%	1,200	0	37,500
12 U.S.C. 3110(c)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,000	2008	3.2%	1,024	0	32,000
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 3909(d)(1)		1,100	1997	40.8%	449	0	1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	7,500	2008	3.2%	240	0	7,500
	Tier 1 (other person)	70,000	2008	3.2%	2,240	0	70,000
	Tier 2 (natural person)	70,000	2008	3.2%	2,240	0	70,000
	Tier 2 (other person)	350,000	2008	3.2%	11,200	0	350,000
	Tier 3 (natural person)	140,000	2008	3.2%	4,480	0	140,000
	Tier 3 (other person)	675,000	2008	3.2%	21,600	25,000	700,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000	N.A.	N.A.	N.A.	N.A.	2,000

2012 Worksheet – Federal Savings Associations

<u>U.S. Code Citation</u>	<u>Tier (if applicable)</u>	<u>Maximum Penalty (in Dollars)</u>	<u>Year Last Adjusted</u>	<u>Percentage Increase</u>	<u>Amount of Increase (in Dollars)</u>	<u>Amount of Increase after Rounding (in Dollars)</u>	<u>Adjusted Maximum Penalty (in Dollars)</u>
12 U.S.C. 1464(v)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,500	2008	3.2%	1,040	0	32,500
	Tier 3	1,375,500	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1467(d)		7,500	2008	3.2%	240	0	7,500
12 U.S.C. 1467a(r)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,500	2008	3.2%	1,040	0	32,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1817(j)(16)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1818(i)(2)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2008	3.2%	8,800	0	275,000
12 U.S.C. 1884		110	2000	30.9%	34	0	110
12 U.S.C. 3349(b)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000	N.A.	N.A.	N.A.	N.A.	2,000

Procedural Issues

Notice and Comment Procedure

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the methodology used to calculate the adjustment or the amount of the adjustment to reflect any views or suggestions provided by commenters. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and that good cause exists for dispensing with them.

Delayed Effective Date

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. See 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

The APA generally requires an agency to publish a rule 30 days prior to its effective date. See 4 U.S.C. 553(d). This rule satisfies that requirement.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because we are not publishing a notice of proposed rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 109

Administrative practice and procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19 – RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code Citation	Tier (if applicable)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1 Tier 2 Tier 3	\$7,500 37,500 1,425,000
12 U.S.C. 164	Tier 1 Tier 2 Tier 3	3,200 32,000 1,425,000
12 U.S.C. 504	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1817(j)(16)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1818(i)(2)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000
12 U.S.C. 1832(c)		1,100
12 U.S.C. 1884		110
12 U.S.C. 1972(2)(F)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 3110(a)		37,500
12 U.S.C. 3110(c)	Tier 1 Tier 2 Tier 3	3,200 32,000 1,425,000
12 U.S.C. 3909(d)(1)		1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person) Tier 1 (other person) Tier 2 (natural person) Tier 2 (other person) Tier 3 (natural person) Tier 3 (other person)	7,500 70,000 70,000 350,000 140,000 700,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000

(b) The adjustments in paragraph (a) of this section apply to violations that occur after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

PART 109 – RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

3. The authority citation for part 109 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1829(e), 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(l), 78o-5, 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

4. Section 109.103(c) is amended by revising the last sentence of the introductory text and the chart to read as follows:

§ 109.103 Civil money penalties.

* * * * *

(c) * * * The amounts in this chart apply to violations that occur after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition – 1 st Tier	\$3,200
12 U.S.C. 1464 (v)(5)	Reports of Condition – 2 nd Tier	32,500
12 U.S.C. 1464(v)(6)	Reports of Condition – 3 rd Tier	1,425,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	7,500
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports – 1 st Tier	3,200
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports – 2 nd Tier	32,500
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports – 3 rd Tier	1,425,000
12 U.S.C. 1817(j)(16)(A)	Change in Control – 1 st Tier	7,500
12 U.S.C. 1817(j)(16)(B)	Change in Control – 2 nd Tier	37,500
12 U.S.C. 1817(j)(16)(C)	Change in Control – 3 rd Tier	1,425,000
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice – 1 st Tier	7,500
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice – 2 nd Tier	37,500
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice – 3 rd Tier	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post Employment Restrictions	275,000
12 U.S.C. 1884	Violation of Security Rules	110
12 U.S.C. 3349(b)	Appraisal Violations – 1 st Tier	7,500
12 U.S.C. 3349(b)	Appraisal Violations – 2 nd Tier	37,500
12 U.S.C. 3349(b)	Appraisal Violations – 3 rd Tier	1,425,000
42 U.S.C. 4012a(f)(5)	Flood Insurance	2,000

Dated: October 26, 2012

Thomas J. Curry,
Comptroller of the Currency.

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